

Title 24 DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT

Subtitle 05 ECONOMIC DEVELOPMENT

Chapter 19 Wineries and Vineyards Capital Expenses Tax Credit

Authority: Tax General Article, §§2-103 and 10-735; Economic Development Article, §2-108; Annotated Code of Maryland

.01 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

- (1) "Comptroller" means the Maryland Comptroller of the Treasury, or the Comptroller's designee.
- (2) "Credit" means the qualified capital expenses tax credit described in Regulation .02 of this chapter.
- (3) "Credit year" means the year for which the credit is being claimed.
- (4) "Department" means the Department of Business and Economic Development.
- (5) "Qualified capital expenses" means all the expenditures made by the taxpayer for the purchase and installation of equipment or agricultural materials for use in the production of agricultural products for winemaking at a vineyard or in a winery, including but not limited to:
 - (a) Barrels;
 - (b) Bins;
 - (c) Bottling equipment;
 - (d) Canopy management machines;
 - (e) Capsuling equipment;
 - (f) Chemicals;
 - (g) Corkers;
 - (h) Crushers;
 - (i) Destemmers;
 - (j) Fermenters or other recognized fermentation devices;
 - (k) Fertilizer and soil amendments;
 - (l) Filters;
 - (m) Fruit harvesters;
 - (n) Fruit plants;
 - (o) Hoses;
 - (p) Irrigation equipment;
 - (q) Labeling equipment;

- (r) Lugs;
 - (s) Mowers;
 - (t) Poles;
 - (u) Posts;
 - (v) Presses;
 - (w) Pruning equipment;
 - (v) Pumps;
 - (x) Refractometers;
 - (y) Refrigeration equipment;
 - (z) Seeders;
 - (aa) Soil;
 - (bb) Small tools;
 - (cc) Tanks;
 - (dd) Tractors;
 - (ee) Vats;
 - (ff) Weeding and spraying equipment;
 - (gg) Wine tanks;
 - (hh) Wire; and
 - (ii) Any other items as approved by the Department.
- (6) "Secretary" means the Secretary of Business and Economic Development, or the Secretary's designee.
- (7) "State" means the State of Maryland.
- (8) "Taxpayer" means an individual or corporation.
- (9) "Vineyard" means agricultural lands located in the State consisting of at least 1 contiguous acre dedicated to the growing of grapes that are used or are intended to be used in the production of wine by a winery and any plants or other improvements located thereon.
- (10) "Winery" means an establishment licensed by the Comptroller as either a Class 3 winery or a Class 4 winery pursuant to Article 2B, §§2–204 and 2–205, Annotated Code of Maryland.

.02 Calculation of Tax Credit.

A. A tax credit is allowed for a taxable year beginning after December 31, 2012 but before January 1, 2018.

B. A taxpayer may claim credits against the State income tax in an amount equal to 25 percent of the qualified capital expenses made in connection with:

.03 Application and Approval of Credit.

A. To claim eligibility for a tax credit and to be certified as eligible for a tax credit, a taxpayer shall submit to the Department, by not later than September 15 of the calendar year following the end of the taxable year in which the costs were incurred an application on a form approved by the Department.

B. Each application shall include the following:

- (1) The legal name of the taxpayer;
- (2) The street address of the principal place of business of the taxpayer, the taxpayer's mailing address, the taxpayer's email address, and the taxpayer's telephone number;
- (3) The name, business mailing address, telephone number, and email address of an individual with authority to act on behalf of the taxpayer;
- (4) The federal employer identification number of the taxpayer or, if the taxpayer is an individual or sole proprietorship, the federal taxpayer identification number of the individual or sole proprietor;
- (5) An account, which may be in the form of a spreadsheet, showing in detail the eligible capital costs incurred by the taxpayer; and
- (6) Any other information requested by the Department.

C. By December 15 of the calendar year following the end of the taxable year in which the qualified capital expenses were incurred, the Department shall certify to the taxpayer the amount of tax credits approved by the Department for the taxpayer.

.04 Maximum Annual Credits.

A. The total amount of credits approved by the Department under Regulation .03C of this chapter may not exceed \$500,000 for any calendar year.

B. If the total amount of credits applied for by all business entities under Regulation .03C of this chapter exceeds the maximum specified under §A of this regulation, the Department shall approve a credit under Regulation .03C of this chapter for each taxpayer in an amount equal to the product of multiplying the credit applied for by the taxpayer times a fraction:

- (1) The numerator of which is the maximum specified under §A of this regulation; and
- (2) The denominator of which is the total of all credits applied for by all business entities under Regulation .03C of this chapter in the calendar year.

.05 Certification of Credit.

The Department shall certify to the taxpayer the amount of the allowed tax credits approved by the Department for the taxpayer. The Department shall issue the certification by December 15 of the calendar year following the end of the taxable year in which the costs were incurred.

.06 Claiming the Credit.

To claim the credits approved by the Department, a taxpayer shall:

A. File with the Comptroller an amended income tax return for the taxable year in which the costs were incurred; and

B. Attach a copy of the Department's certification of the approved credit amount to the amended income tax return.

.07 Carryover of Tax Credits.

A. If the credit allowed pursuant to this chapter in any taxable year exceeds the total tax otherwise payable by the taxpayer for that taxable year, the taxpayer may apply the excess as a credit for succeeding taxable years until:

B. A tax credit may not be carried back to a preceding taxable year.

.08 Mergers and Acquisitions.

A. In determining the carryover of unused credits and the effect of a merger or acquisition, federal law shall be applied to the business entities as if they were separate business entities. Any provisions under federal law that would allow separate corporations that are merged or acquired to carry forward unused credits on the surviving corporation's returns shall apply to the carryover of this credit for State purposes.

B. Unused Credits.

(1) In a transaction involving an asset purchase, unused credits:

(a) Do not transfer from the taxpayer to the purchaser; and

(b) Shall remain with the taxpayer to whom or to which the certificate was issued.

(2) Unused credits may not be sold or purchased.

.09 Short Taxable Years.

A. Eligible Costs. A taxpayer may only claim the credit for allowed costs incurred during its taxable year. If the taxpayer has a short taxable year, only the allowed costs incurred during the short taxable year are allowed on the short year return.

B. If the taxpayer incurs allowed costs in 2 taxable years during a calendar year, one of which is a short taxable year, the taxpayer may only claim a credit on the short taxable year return in an amount equal to the total credits certified by the Department multiplied by a fraction:

(1) The numerator of which is the allowed qualified capital costs incurred during the short taxable year; and

(2) The denominator of which is the allowed qualified capital costs incurred during the entire calendar year.

.10 Addition Modifications.

A. Individuals. To the extent an individual is allowed a credit on the State individual income tax return, the amount of the credit claimed shall be added to federal adjusted gross income to calculate the individual's State adjusted gross income.

B. Corporations. To the extent that a corporation is allowed a credit on its State income tax return, the amount of the credit claimed shall be added to federal taxable income to calculate the corporation's State modified income.

.11 Partnerships, S Corporations, Limited Liability Companies, Business Trusts, Estates, and Trusts.

A. Partnerships, S Corporations, Limited Liability Companies, and Business Trusts. In the case of a subchapter S corporation, partnership, limited liability company, or business trust, the amount of the credits computed for the pass-through entity shall be allocated among the owners as agreed to in writing by the owners in accordance with Internal Revenue Service rules.

B. Estates and Trusts. In the case of an estate or trust, the amount of the credits computed for the estate or trust for any taxable year shall be apportioned among the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

C. Statements to Partners, Shareholders, Members, and Beneficiaries.

(1) Requirements. A partnership, S corporation, limited liability company, business trust, estate, or trust shall provide each of its partners, shareholders, members, or beneficiaries with a Maryland Form 510, Schedule K-1.

(2) Statement Attached to Return. A partner, shareholder, member, or beneficiary shall attach a copy of the Maryland Form 510, Schedule K-1 to the income tax return on which the credit is claimed.

D. Year in which Credits are Claimed. The credit apportioned to a partner, shareholder, member or beneficiary under §§A—C of this regulation shall be claimed on the partner's, shareholder's, member's or beneficiary's State tax return in the taxable year of the partner, shareholder, member, or beneficiary within which the taxable year of the pass through entity ends.

.12 Audits and Inquiries.

A. Audits.

(1) If the Department becomes aware of facts and circumstances that reasonably warrant an audit of the factual or accounting basis of a taxpayer's claim of eligibility for a tax credit under this chapter or of a claim of tax credit under this chapter, the Department may require at any reasonable time before or after the issuance of a certificate of eligibility for tax credit that any information provided to the Department by a taxpayer be audited.

(2) The Department may require at any reasonable time an audit of any information submitted to the Department:

(a) By any taxpayer that applies for certification by the Department of tax credits under this chapter; and

(b) By any taxpayer that has been certified by the Department for a tax credit.

(3) An audit under §A(2) of this regulation shall be directed to the taxpayer's basis for its claim of eligibility for the tax credit under this chapter.

(4) An audit under §A(2) of this regulation shall be conducted at the taxpayer's expense by an independent auditor selected by the taxpayer and reasonably satisfactory to the Department.

(5) The Department may initiate an audit by delivering to the taxpayer a written request for the performance of an audit stating the scope of the audit to be undertaken and the matters to be examined in the course of the audit.

(6) Within 10 business days after a taxpayer receives a request from the Department for the performance of an audit under this regulation, the taxpayer shall submit to the Department a written response naming the independent auditor selected by the taxpayer.

(7) If the Department approves the auditor, it shall give written notice to the taxpayer that the Department approves the auditor and shall provide instructions to the auditor for the scope and conduct of the audit.

(8) If the Department disapproves of the selected auditor, it shall give written notice to the taxpayer of the disapproval and of the reasons for it. The taxpayer shall, within 5 business days after receipt of notice of the Department's disapproval of an auditor, select an alternative auditor and submit to the requesting agency a written response naming the alternative independent auditor selected by the taxpayer.

(9) The process pursuant to §§A(5)—(8) of this regulation for the selection and approval of an auditor will continue until the Department will have approved an alternative auditor pursuant to §A(7) of this regulation.

(10) The approved auditor shall proceed to conduct the audit with due diligence and dispatch, and in accordance with the Department's instructions. Within 90 days of the Department's notice approving the selection of an auditor, the auditor shall submit to the Department and to the taxpayer a full report of its audit procedures, tests, matters examined, and findings.

(11) The Comptroller retains its audit authority under the Tax-General Article, Annotated Code of Maryland.

B. Inquiries; Duty of Business Entities to Respond.

(1) If the Department becomes aware of facts and circumstances that reasonably warrant further inquiry into the factual basis of a taxpayer's claim of eligibility for a tax credit under this chapter, or the basis of the taxpayer's claim of a tax credit under this chapter, the Department may make written inquiry, including a request for the production, inspection, or copying of documents specified in the inquiry, of any taxpayer or holder of a certificate of eligibility for a tax credit under this chapter to obtain information bearing on the eligibility of the taxpayer or of the taxpayer's partners, shareholders, members, or beneficiaries for that credit. The inquiry may include, but may not be limited to, whether the claimed costs were in fact incurred in the State.

(2) A taxpayer to which a written inquiry from the Department is directed under §B(1) of this regulation shall submit a full and complete written response, with copies of all requested documents, within 45 days of the date of the inquiry. The response shall be verified as true and correct by oath or affirmation made under penalty of perjury by the individual proprietor or by an individual officer, partner, or member of the taxpayer.

.13 Waiver.

The Secretary may waive or vary particular provisions of this chapter to the extent that the waiver is not inconsistent with Tax-General Article, §10-735, Annotated Code of Maryland.

Administrative History

Effective date: February 3, 2014 (41:2 Md. R. 92)